IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Bail Appl..No. 7439 of 2007()

CRIME NO.143/2007 OF ARYANADU EXCISE RANGE

: PETITIONER/ACCUSED

VASANTHA, MELEPUTHEN VEEDU,
K.P.VII-212, KOTTOOR,
MANNOORKKARA VILLAGE,
NEDUMANGAD TALUK, THIRUVANANTHAPURAM.

BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.

RESPONDENTS: COMPLAINANT

---

1. STATE OF KERALA, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. THE EXCISE INSPECTOR,
ARYANAD EXCISE RANGE, ARYANADU,
THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7439 of 2007

Dated this the 4th day of December, 2007

ORDER

Application for anticipatory bail. Petitioner, a woman, faces allegations under the Kerala Abkari Act. She was allegedly found to be in possession of 3 litres of arrack on 14.11.2007. She could not be arrested as the detecting excise party did not consist of any woman official. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The article in question was not kept by the petitioner at the place from where it was recovered. The husband of her servant had allegedly kept the article there. The allegations against the petitioner are raised without any valid justification, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. All the available indications point to the culpability of the petitioner. No circumstances exist warranting or justifying the invocation of the extraordinary equitable discretion under Section

438 Cr.P.C. The petitioner may be directed to surrender before the learned Magistrate or the Investigating Officer and then seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. I find merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is a fit case where the petitioner must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek bail in the regular and ordinary course. I find no features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-